

U.S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of NORA L. MONK and DEPARTMENT OF VETERANS AFFAIRS,
PHOENIX MEDICAL CENTER, Phoenix, Ariz.

*Docket No. 96-2231; Submitted on the Record;
Issued July 14, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant's disability for work after October 12, 1995 is causally related to her employment injury of November 8, 1994 or to factors of her federal employment.

On November 8, 1994 appellant, a nurse, sustained an injury while in the performance of duty when she assisted a fallen patient. The Office of Workers' Compensation Programs accepted her claim for the condition of lumbar strain and sacroiliac strain, bilateral. She was released to full duty on December 22, 1994. Lost time from work was covered by continuation of pay.

On October 30, 1995 appellant filed a claim asserting that she sustained a recurrence of disability after October 12, 1995 that was related to her injury of November 8, 1994. She stated that lower back pain started on October 9, 1995 and that by the end of the workday on October 12, 1995 she could hardly walk. Because the pain was in the same area as the year before and because the pain felt the same, appellant felt it was related to the original injury.

The Office requested additional information, including a report from her physician providing a medically rationalized opinion on the causal relationship between her current condition and the original injury.

In a decision dated January 11, 1996, the Office denied appellant's claim of recurrence on the grounds that the medical evidence of record – which showed that she had a disc protrusion at the L4-5 level, right, with radiculopathy; degenerative disc disease; vacuum disc phenomenon; degenerative changes from L3-4; spondylosis from L3 to S1; and spinal stenosis – failed to support that her condition was causally related to the employment injury November 8, 1994.

Appellant requested reconsideration and submitted in support thereof a December 20, 1995 report from Dr. Irving E. Weston, her attending family practitioner. Responding to the

Office's earlier request for additional information, Dr. Weston stated that appellant had been treated since October 13, 1995 for low back pain. He related that appellant was working her usual job as a nurse, lifting patients and doing her usual duties, and started to have back pain on October 9, 1995 with no specific incident to report as causative. This progressed, he stated, until October 12, 1995, when she became incapacitated. Dr. Weston also related the history of appellant's November 8, 1994 injury. He noted that appellant had been free of her prior discomfort until October 9, 1995. After reporting his findings, Dr. Weston addressed the issue of causal relationship as follows:

“This individual in her usual work did lift patients and traumatized her previously injured back by this activity plausibl[y] causing ultimate degeneration of L4-5 disc to allow it to burst beyond the containing annular ligaments and protrude. In the disc's protruded state it contacted nerves that created the pain sustained.”

Responding to question posed by the Office, Dr. Weston reported that appellant had recovered from her original injury as she was free of pain for approximately 11 months. He stated that there was no inciting trauma except the requirements of work, which involved lifting, standing and walking, which led to the sudden onset of pain on October 9, 1995. Noting that the original injury was diagnosed as low back strain without the benefit of x-rays, Dr. Weston stated that the first injury “could have set the stage of disc degeneration that culminated 11 months later with disc protrusion.” He indicated that the initial injury was prone to recurrence, but that the protruded disc took precedence as to severity or disability. He stated that he knew of no precipitating factors capable of causing appellant's condition by itself.

An Office medical adviser reviewed the record and noted that there was evidence of preexisting degenerative disc disease and no clear history of an aggravating incident at work. “It is theoretically possible that this is related,” the medical adviser reported, but he added, “there is no definite supportive evidence in the chart.”

In a decision dated April 19, 1996, the Office reviewed the merits of appellant's claim and denied modification of its prior decision on the grounds that Dr. Weston's opinion was speculative.

The Board finds that the medical opinion evidence of record is insufficient to establish that appellant's disability after October 12, 1995 is causally related to her employment injury of November 8, 1994 or to factors of her federal employment.

A claimant seeking benefits under the Federal Employees' Compensation Act¹ has the burden of proof to establish the essential elements of her claim by the weight of the evidence,² including that she sustained an injury in the performance of duty and that any specific condition

¹ 5 U.S.C. §§ 8101-8193.

² *Nathaniel Milton*, 37 ECAB 712 (1986); *Joseph M. Whelan*, 20 ECAB 55 (1968) and cases cited therein.

or disability for work for which she claims compensation is causally related to that employment injury.³

The evidence generally required to establish causal relationship is rationalized medical opinion evidence. The claimant must submit a rationalized medical opinion that supports a causal connection between her current condition or disability and factors of her employment. The medical opinion must be based on a complete factual and medical background with an accurate history of the claimant's employment injury, and must explain from a medical perspective how the current condition or disability is related to the injury.⁴

To support her claim, appellant submitted the December 20, 1995 report of Dr. Weston, her attending family practitioner. Dr. Weston's opinion that appellant's initial injury could have set the stage for disc degeneration that ultimately culminated 11 months later in disc protrusion is unsupported and appears speculative. Although the medical opinion of a physician supporting causal relationship does not have to reduce the cause or etiology of a disease or condition to an absolute medical certainty, neither can such opinion be speculative or equivocal.⁵ The Board finds that Dr. Weston's opinion is of limited probative value on the issue of recurrence and is insufficient to establish that appellant's disability after October 12, 1995 is causally related to the employment injury of November 8, 1994.

Dr. Weston also reported that, although there was no specific incident reported as causative, appellant's usual duties did traumatize her previously injured back, plausibly causing her disc protrusion. This is generally supportive of a later, occupational injury occurring over a period of time, but without an explanation showing how, to a reasonable degree of medical certainty, the specific duties caused or contributed to the diagnosed disc protrusion, Dr. Weston's opinion is too brief and unsupported to establish that appellant's disability after October 12, 1995 is causally related to the duties she performed in her federal employment. Once again, it is not necessary that the evidence be so conclusive as to suggest causal connection beyond all possible doubt in the mind of a medical scientist. The evidence required is only that necessary to convince the adjudicator that the conclusion drawn is rational, sound and logical.⁶ Because the record contains no such reasoned medical opinion, the Board finds that the Office properly denied appellant's claim.

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *See John A. Ceresoli, Sr.*, 40 ECAB 305 (1988).

⁵ *See Philip J. Deroo*, 39 ECAB 1294 (1988); *Jennifer Beville*, 33 ECAB 1970 (1982) (statement of a Board-certified internist that the employee's complaints "could have been" related to her work injury was speculative and of limited probative value).

⁶ *Kenneth J. Deerman*, 34 ECAB 641, 645 (1983) and cases cited therein at note 1.

The April 19, 1996 decision of the Office of Workers' Compensation Programs is affirmed.

Dated, Washington, D.C.
July 14, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member